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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,793	05/12/2005	Robert W. Blair	02-44 US	1653
23693	7590	06/04/2007		
Varian Inc. Legal Department 3120 Hansen Way D-102 Palo Alto, CA 94304			EXAMINER NGUYEN, SANG H	
			ART UNIT 2886	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/534,793

Applicant(s)

BLAIR, ROBERT W.

Examiner

Sang Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 5/12/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/12/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 05/12/05 has been entered. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Objections***

Claims 8-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claims 8-13. See MPEP § 608.01(n). Accordingly, the claims 8-13 not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Baba et al (U.S. Patent No. 4,462,962).**

**Regarding claim 1;** Baba et al discloses a flow through cell for, comprising:

a plurality of body members (e.g., a hollow tube [1 of figure 1A] and cell holders [2A, 2B of figure 1A]) including an intermediate body member (e.g., considered to be a

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hollow tube [1 of figure 1A]) located between two other body members (2A, 2B of figure 1A), the plurality of body members (1, 2A, 2B of figure 1A) being clamped together by O-ring (5A,5B of figure 1A and col.4 lines48-52) and providing a small volume flow through passage (7A, 7B of figure 1A and col.4 lines 55-57),

wherein a part of the flow through passage (figure 1A) comprises a hole (3A, 3B of figure 1A) through the intermediate body member (1 of figure 1A) together with a liquid inlet region (4A of figure 1A) at one end of the hole (3A of figure 1A) and a liquid outlet region (4B of figure 1A) at the other end of the hole (3B of figure 1A),

wherein the two other body members (2A, 2B of figure 1A) are each associated with an optically transparent window (8A,8B of figure 1A) aligned with a respective end of the hole (3A, 3B of figure 1A) through the intermediate body member (1 of figure 1A) thereby providing an optical pathway (figure 1A, e.g., from the light source [13 of figure 1] to photodetector [14 of figure 1]) through said part of the flow through passage (figure 1),

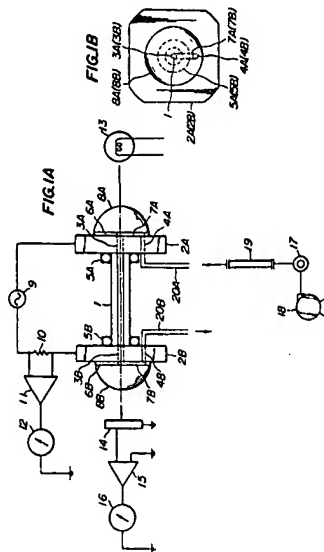
wherein the liquid inlet and liquid outlet regions (4A, 4B of figure 1) are provided by respectively, a portion of the flow through passage (7A, 7B of figure 1) through which liquid flows into or out of a said region substantially immediately adjacent the optically transparent window (8A, 8B of figure 1) transversely of the direction of the hole (3A, 3B of figure 1). See figures 1-5.

It is noted that the recitation "use in a spectrophotometer for analysis of dissolved chemical substances in a flowing liquid stream" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded

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any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

U.S. Patent Jul. 31, 1984 Sheet 1 of 5 4,462,962



### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baba et al (U.S. Patent No. 4,462,962) in view of Ssaito et al (U.S. Patent No. 5,606412).**

**Regarding claim 2;** Baba et al discloses all of features of claimed invention except for a resilient sealing gasket located between facing surfaces of the intermediate body member and, respectively, each of the two other body members, wherein each gasket includes a gallery which provides said portion of the flow through passage. However, Saito et al teaches that it is known in the art to provide a flow cell assembly (figures 1 and 4-6) having a resilient sealing gasket (122, 132 of figure 4) located between facing surfaces of the intermediate body member (112 of figure 4) and, respectively, each of the two other body members (120, 130 of figure 4), wherein each gasket (122 of figure 6) includes a gallery (e.g., aperture, opening or hole [134a-134b of figure 6]) which provides said portion of the flow through passage (112 of figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate flow cell of Baba et al with a resilient sealing gasket located between facing surfaces of the intermediate body member and, respectively, each of

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the two other body members, wherein each gasket includes a gallery which provides said portion of the flow through passage as taught by Saito et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

U.S. Patent Feb. 25, 1997 Sheet 3 of 12 5,606,412

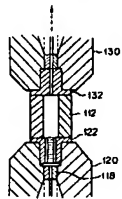


FIG. 4

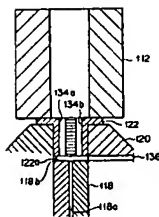


FIG. 5

**Regarding claim 3;** Baba et al discloses all of features of claimed invention except for the gallery in the gasket on an inlet side of the flow through passage is in the form generally of a spiral. However, Saito et al teaches that it is known in the art to provide the gallery (34a, 34b of figure 6) in the gasket (112 of figure 6) on an inlet side of the flow through passage is in the form generally of a spiral (figures 5-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate flow cell of Baba et al with the gallery in the gasket on an inlet side of the flow through passage is in the form generally of a spiral as taught by Saito et al

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for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

**Regarding claim 4;** Baba et al discloses all of features of claimed invention except for each of said other two body members includes a gallery which provides said portion of the flow through passage. However, Saito et al teaches that it is known in the art to provide each of said other two body members (120, 130 of figure 4) includes a gallery (118 of figure 5) which provides said portion of the flow through passage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate flow cell of Baba et al with each of said other two body members includes a gallery which provides said portion of the flow through passage as taught by Saito et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

**Regarding claim 5;** Baba et al discloses at least the intermediate body member (1 of figure 1), or at least each of the other two body members is resilient to provide for sealing contact (5A, 5B of figure 1) between adjacent body members (2A, 2B of figure 1). It is noted that the language of the present invention "at least the intermediate body member, or at least each of the other two body members" is alternative (optional). For the purposes examination, this feature chooses "at least the intermediate body member".

**Regarding claim 6;** Baba et al discloses the optically transparent window (8A, 8B of figure 1) associated with each of the other two body members (2A, 2B of figure 1).



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is a window assembly sealingly mounted within a hole (3A, 3b OF FIGURE 1) in a body member (2a, 2b of figure 1).

**Regarding claim 7;** Baba et al discloses the optically transparent window (8A, 8B of figure 1) associated with each of the other two body members (2A, 2B of figure 1) is provided by respectively a transparent plate (6A, 6B of figure 1) sandwiched between the intermediate body member (1 of figure 1) and one of the other body members (2A, 2B of figure 1).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Takayama (7204139) discloses analytical chip apparatus; Banes (6586235) discloses apparatus for growing cells in culture; Singh-Gasson et al (6444175) discloses flow cell for synthesis of arrays of DNA; Liston et al (5357113) discloses infrared gas mixture analyzer; Scott et al (5073345) discloses light detector apparatus; Magnussen, Jr. (5062706) discloses high pressure fluid sample flow cell; Paradis (4886356) discloses detector cell; Rossiter (4822166) discloses flow through cells for spectroscopy; Sutherland et al (4818710) discloses method for optically ascertaining parameters of species in a fluid; or Allington et al (4575424) discloses chromatographic flow cell.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Nguyen whose telephone number is (571) 272-2425. The examiner can normally be reached on 9:30 am to 7:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifu Chowdhury can be reached on (571) 272-2800 ext. 86. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 30, 2007

  
**Sang H. Nguyen**  
**Primary Patent Examiner**  
**Art Unit 2886**